Re Ng

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Gary Man Kin Ng

2022 IIROC 15

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: May 9, 2022 (liability) and May 27, 2022 (penalty) in Vancouver, British Columbia
Decision: May 9, 2022 (liability) and May 27, 2022 (penalty)
Reasons for Decision: July 4, 2022

Hearing Panel:
John Rogers, Chair, Bradley Doney and Barb Fraser
Appearance:
David McLellan, Senior Enforcement Counsel
Gary Man Kin Ng (absent)

REASONS FOR DECISION ON LIABILITY AND THE IMPOSITION OF A PENALTY

PRELIMINARY MATTERS

¶ 1 This matter was commenced pursuant to a Notice of Hearing ("Notice of Hearing") dated November 2, 2020 issued pursuant to Sections 8203 and 8205 of the Consolidated Enforcement Examination and Approval Rules (the "Consolidated Rules") of the Investment Industry Regulatory Organization of Canada ("IIROC").

¶ 2 The Notice of Hearing, when issued, named Gary Man Kin Ng ("Ng", the Respondent) and Donald Warren Metcalfe ("Metcalfe").

¶ 3 The initial appearance in this matter ("Initial Hearing") was held by videoconference on January 6, 2021. At the date of the Initial Hearing, as Metcalfe was ill, he was unable to attend, but he was represented by counsel. However, despite having been served on November 5, 2020 with the Notice of Hearing, the Respondent did not attend. The Initial Hearing was adjourned to March 9, 2021.

¶ 4 At the adjourned Initial Hearing held on March 9, 2021 by videoconference, as he had not recovered from his illness, Metcalfe did not attend, but he was again represented by counsel. Again, although having been notified of its occurrence, the Respondent did not attend the Hearing. At the adjourned Initial Hearing, the hearing for this matter was determined to be an in-person hearing in Vancouver during the weeks of October 18, 2021 and October 29, 2021.

¶ 5 At the request of counsel for IIROC and Metcalfe, and following the appointment of the Hearing Panel, a Prehearing Conference ("Prehearing Conference") was held by videoconference on September 15, 2021. Notice of this Prehearing Conference was again given to the Respondent, but he did not attend the Prehearing

Conference.

¶ 6 During the Prehearing Conference at which Metcalfe was again represented by counsel, his counsel provided the Hearing Panel with evidence of Metcalfe's serious illness. As a result of this evidence and with the concurrence of counsel for IIROC and Metcalfe, the Hearing Panel determined to move the hearing in this matter from October 18, 2021 to February 22, 2022 and to adjourn the Prehearing Conference until November 18, 2021. A public statement with respect to the change in the hearing date and the adjournment of the Prehearing Conference was issued at the direction of the Hearing Panel.

¶ 7 At the adjourned Prehearing Conference held on November 18, 2021 by videoconference, the Hearing Panel was again advised that the Respondent had been notified of its occurrence, but he did not attend. Metcalfe was represented by counsel who provided the Hearing Panel with updated evidence on Metcalfe's health, clearly demonstrating that it was not improving. Based upon this evidence, the Hearing Panel at the request of counsel, further adjourned the hearing in this matter from February 22, 2022 to May 9, 2022 and, as well, adjourned the Prehearing Conference to January 26, 2022. Again, at the direction of the Hearing Panel, a public statement of these adjourned dates was published.

¶ 8 In the course of adjourning the Prehearing Conference to January 26, 2022, the Hearing Panel requested from IIROC Senior Enforcement Counsel that the Hearing Panel receive, prior to the January 26, 2022 date, IIROC's submissions as to why this matter should not be severed. Such a severance would permit the proceeding against Metcalfe to be adjourned to a future date at which his health would permit him to participate while the matter against the Respondent would proceed as scheduled on May 9, 2022.

¶ 9 At the adjourned Prehearing Conference held by videoconference on January 26, 2022, the Hearing Panel was again advised that the Respondent had been notified of its occurrence, but he did not attend. The Hearing Panel was presented with evidence concerning Metcalfe's continuing poor health and, with the consent of both counsel for both Metcalfe and for IIROC, the Hearing Panel determined to sever the proceedings, to adjourn sine die the proceeding against Metcalfe until his health had improved, and to proceed with the hearing against the Respondent on May 9, 2022 in the form of an in person hearing in Vancouver, British Columbia. The Hearing Panel further adjourned the Prehearing Conference to April 12, 2022 to deal with the proceedings for the in-person hearing scheduled to commence on May 9, 2022.

¶ 10 At the final occurrence of the Prehearing Conference held by videoconference on April 12, 2022, the Hearing Panel was again advised that the Respondent had been notified of its occurrence, but he did not attend.

¶ 11 As noted above, the hearing on liability in this matter against the Respondent alone was held in Vancouver on May 9, 2022 with attendance both in-person and by videoconference, and the hearing on penalty against the Respondent in this matter was held on May 27, 2022. The Respondent did not attend either of these hearings even though the Hearing Panel was advised that the Respondent had been given proper notice of both of their occurrences.

HEARING ON LIABILITY

A. NOTICE TO THE RESPONDENT

¶ 12 In his submissions to the Hearing Panel at the commencement of the liability hearing on May 9, 2022, IIROC Senior Enforcement Counsel noted that the Respondent was not present either in person or by way of videoconference at the hearing.

¶ 13 Counsel referenced the many attempts by IIROC to notify the Respondent of the allegations being made by IIROC against him, commencing in November 2020 with the issuance of the Notice of Hearing containing these allegations in the form of a detailed statement of allegations (the "Statement of Allegations"). He noted the numerous notifications served on the Respondent or directed to and unclaimed by

the Respondent for the adjourned hearings at which his presence not only was required but would have been expected.

¶ 14 IIROC Senior Enforcement Counsel submitted that the Respondent was well aware of the allegations being made by IIROC against him and of his obligation under the Consolidated Rules to participate in this hearing process.

B. IIROC'S ALLEGATIONS AGAINST THE RESPONDENT

Contraventions

Contravention 1

¶ 15 IIROC alleges that between November 2018 and January 2020, the Respondent engaged in fraudulent conduct with respect to loan financing, conduct clearly unbecoming and contrary to Rule 1400 of the Consolidated Rules.

Contravention 2

¶ 16 IIROC alleges that in July 2020, contrary to Section 8104 of the Consolidated Rules, the Respondent failed to cooperate with IIROC Enforcement Staff who were conducting an investigation.

Alleged Facts Supporting Contravention 1

¶ 17 The Respondent was first registered as a Registered Representative in 2008. In 2012, he co-founded Chippingham Financial Group Limited ("Chippingham"), a small Winnipeg based Dealer Member firm, and became the Executive Chairman, a director, and a 100% beneficial indirect owner of Chippingham through a structure of various entities controlled by him (the "Ng Group") in which he was the sole beneficial owner.

¶ 18 In November 2018, through the Ng Group, the Respondent acquired a 100% controlling interest in the Vancouver based Dealer Member firm, PI Financial Corp. ("PI Financial"), for a cash purchase price of $100 million. Following this purchase, the Respondent became the Executive Chairman, a director, and a 100% beneficial indirect owner of PI Financial through the Ng Group, resulting in his registration as an Approved Person and a Registered Representative at PI Financial.

¶ 19 The purchase of PI Financial was partially financed by loans (the "PI Purchase Loans") advanced by two lenders, Lender One in the amount of approximately $80 million (the "Lender One Loan") and Lender Two in the amount of approximately $20 million (the "Lender Two Loan 1").

¶ 20 On July 5, 2019, Lender Two advanced to the Ng Group the amount of $20 million (the "Lender Two Loan 2") for the purpose of purchasing a 50% interest in the shares of B Corp, a private Canadian company.

¶ 21 On June 21, 2019, the Ng Group borrowed approximately $32 million from B Corp (the "B Corp Loan").

¶ 22 In January 2020, Lender Two agreed to lend to the Ng Group an additional $20 million (the "Lender Two Loan 3").

¶ 23 The fraudulent conduct alleged in Contravention 1 relates to the procurement by the Ng Group of a total of $172 million in loans from the three separate lenders as above described on the basis of falsified collateral records provided by the Respondent in support of the provision of security for these loans.

¶ 24 At the end of January 2020, PI Financial became aware of the issues concerning the Respondent's purported ownership of and the value of the securities accounts as reflected in these falsified records and reported these matters to IIROC.

¶ 25 On February 11, 2020, the Respondent resigned as an employee of PI Financial.

¶ 26 During the course of its investigation, IIROC Enforcement Staff have not found any evidence of any client losses.

¶ 27 The facts surrounding each of the loans constituting the referenced $172 million total of loans in the Statement of Allegations are as follows:

The PI Purchase Loans – The Lender One Loan

¶ 28 Lender One is an investment firm based in the United States.

¶ 29 To provide security for the approximately $80 million loaned by Lender One to the Ng Group for the purchase of PI Financial, the Respondent:

- supplied his personal guarantee in the amount of $16 million,
- provided security by pledging two securities accounts at Chippingham ("J Accounts"), which at the time of granting this security had a market value of approximately $27 million, and
- represented that he owned the J Accounts.

¶ 30 The J Accounts were, in fact, not owned by the Respondent, but by J Corp, a client of Chippingham.

¶ 31 The Respondent falsified the statements for the J Accounts by changing the name on the account statements, summaries, and screen shots for the J Accounts from that of the true owner of the J Accounts to that of the Respondent.

¶ 32 Following the initial granting of security over the J Accounts, on April 1, 2019, Lender One requested that the Respondent advise Lender One of the current market value of the J Accounts and the Respondent again supplied Lender One with falsified summaries of the J Accounts indicating the then market value of approximately $22 million as at March 31, 2019.

¶ 33 On July 3, 2019, the Respondent advised Lender One that as he had moved his personal trading account from Chippingham to PI Financial, the account numbers for the J Accounts previously supplied to Lender One were no longer valid and he undertook to promptly provide Lender One with the new PI Financial account numbers.

¶ 34 The motivation for this action by the Respondent, as described below, was Lender Two discovering that its purported security interest in the J Accounts was subordinate to that of Lender One.

¶ 35 On July 4, 2019, the Respondent by email provided the new replacement account numbers for the J Accounts as being the 013 Account ("013 Account") and the 023 Account ("023 Account"). As part of this communication, the Respondent provided an account "snapshot" for the 013 Account, which stated that 013 Account was in the name of the Respondent and that it had a current market value of $20,634,368.87.

¶ 36 However, contrary to what the Respondent stated in this July 4, 2019 email to Lender One:

- The 013 Account and the 023 Account were not replacement accounts for the J Accounts, but were entirely new accounts,
- The 013 Account did not contain any securities and had a zero balance, and
- The 023 Account was a fictitious account and did not exist at PI Financial.

¶ 37 On July 5, 2019, the Respondent executed and delivered an Amended Securities Pledge Agreement in favour of Lender One purportedly granting security over the 013 Account, which had no value, and the 023 Account, which did not exist.

¶ 38 On October 8, 2019, the Respondent again emailed Lender One falsified account summaries for the 013 Account and the 023 Account purporting to show that the 013 Account had a current market value of $20,843,710.40 and the 023 Account had a current market value of $1,238,001.01.

¶ 39 On October 8, 2019, the 013 Account still had a zero balance and the 023 Account still did not exist.

¶ 40 Similarly, on January 20, 2020, the Respondent emailed Lender One falsified account summaries for the 013 Account and the 023 Account purporting to show that the 013 Account had a current market value of $21,139,490.78 and the 023 Account had a current market value of $1,339,929.14, when the 013 Account continued to have a zero balance and the 023 Account did not exist.

¶ 41 On January 27, 2020, the Respondent executed and delivered another Securities Pledge Agreement in favour of Lender One as additional security for the Lender One Loan. This agreement referenced two other securities accounts at PI Financial supposedly owned by the Respondent (the "184 Accounts"). The 184 Accounts were represented to have a market value of approximately $91 million when, in fact, they had a total market value of approximately $1,900,000.

The PI Purchase Loans – The Lender Two Loan 1

¶ 42 Lender Two is an asset management firm based in Canada.

¶ 43 On November 22, 2018, to secure the Lender Two Loan 1, the Respondent:

- granted his personal guarantee to secure the indebtedness of the NG Group to Lender Two,
- provided security over the same J Accounts over which he had previously granted security to Lender One,
- represented that these accounts had a market value of approximately $26 million, and
- represented that he owned the J Accounts.

¶ 44 As with the situation with Lender One, the Respondent did not own the J Accounts and falsified the statements, summaries and screen shots of the J Accounts provided by the Respondent to Lender Two by changing the client's name on the account records from J Corp to that of the Respondent.

¶ 45 On April 30, 2019, the Respondent executed and delivered an Amended and Restated Securities Account Pledge and Control Agreement in favour of Lender Two and specifically referenced the J Accounts but with new PI Financial account numbers.

The B Corp Purchase Loan – The Lender Two Loan 2

¶ 46 On June 20, 2019, the Respondent having represented to Lender Two that he held an additional account at PI Financial with a market value of $87,385, 816.96 (the "R Account"), Lender Two agreed to advance the Lender Two Loan in the amount of $20 million to the Ng Group to purchase the 50% interest in shares of B Corp. This Lender Two Loan was to be secured by a Securities Control and Pledge Agreement securing the R Account in Lender Two's favour.

¶ 47 In fact, the R Account was owned by the R Corp, a client of PI Financial. The Respondent had changed the name on the account statement for this account from that of R Corp to that of his own. In addition, the market value of the holdings in this account had been altered to show a 10-fold increase the market value from approximately $8.7 million to the value of approximately $87 million, which amount he had represented to Lender Two on June 20, 2019 to secure its agreement to advance the Lender Two Loan.

¶ 48 On July 3, 2019, Lender Two emailed the Respondent querying why it appeared that the J Accounts were pledged to another company in priority to Lender Two and the Respondent replied that it was "an error".

¶ 49 This was not an error. The Respondent, despite not actually owning the J Accounts, had purported to pledge them to Lender Two without disclosing to Lender Two the prior security interest thereon which had been granted in favour of Lender One.

¶ 50 On July 5, 2019, Lender Two advanced the Lender Two Loan 2 in the amount of $20 million to the Ng

Group secured in part by accounts the Respondent represented to Lender Two that he owned at PI Financial. In reality, as of July 5, 2019, the Respondent owned only two accounts at PI Financial with values of $4 and USD $222,359.

¶ 51 On July 9, 2019, the Respondent emailed Lender Two a falsified account summery for the R Account and followed up on July 11, 2019 with falsified account summaries for the J Accounts and the R Account. The account summaries indicated that the accounts were owned by the Respondent when they were not, that the J Accounts had a current market value of approximately $20.5 million, and that the R Account had a market value of approximately $90.5 million when, in fact, it was owned by a client and its market value was approximately $8.6 million.

The Lender Two Loan 3

¶ 52 In January 2020, Lender Two loaned the Ng Group the Lender Two Loan 3 in the amount of $20 million, which loan was secured by:

- The personal guarantee of the Respondent, and
- A Pledge Agreement and a Securities Account Pledge and Control Agreement whereby the Respondent purported to pledge the J Accounts and the R Account.

¶ 53 At no time did the Respondent own, control, or have any ownership interest in any of the J Accounts or the R Account.

The B Corp Loan

¶ 54 At approximately the same time that the Ng Group borrowed the $20 million Lender Two Loan 2 for the purpose of acquiring a 50% share ownership interest in B Corp, on June 21, 2019, B Corp loaned to the Ng Group the B Corp Loan in the amount of $32 million secured by:

- The personal guarantee of the Respondent, and
- A General Security and Pledge Agreement and a Securities Account Control Agreement whereby the Respondent pledged as collateral an account owned by him at PI Financial ("Account 58"), purportedly having a market value of $90,444,768.18.

¶ 55 Account 58 was indeed owned by the Respondent, but it had an actual value of a mere $4.

Alleged Facts Supporting Contravention 2

¶ 56 On July 9, 2020, the Respondent failed to attend an interview with IIROC Enforcement Staff and has continued to fail to cooperate with the IIROC investigation into the alleged fraudulent conduct by the Respondent to obtain a total of approximately $172 million in loans from three separate lenders on the basis of the falsified securities accounts.

Contraventions Proven

¶ 57 IIROC Senior Enforcement Counsel submitted that the facts before the Hearing Panel clearly demonstrated that the Respondent perpetuated a fraudulent scheme by deceiving lenders into providing millions of dollars in loans in reliance on falsified and fictitious documentation purportedly evidencing substantial financial assets as security, which financial assets either did not exist or he did not own.

¶ 58 The Respondent's actions as described clearly constituted conduct unbecoming contrary to Consolidated Rule 1400.

¶ 59 Similarly, IIROC Senior Enforcement Counsel submitted, the Respondent's failure to attend interviews with IIROC Enforcement Staff and his utter failure to participate in this hearing process clearly constituted a failure to cooperate contrary to Section 8104 of the Consolidated Rules.

C. APPLICATION OF SECTION 8415 OF THE CONSOLIDATED RULES

Accept as Proven Statement of Allegations

¶ 60 IIROC Senior Enforcement Counsel referenced Section 8415 of the Consolidated Rules which states:

ENFORCEMENT PROCEEDINGS

8415. Response to a Notice of Hearing

(1) A respondent must serve and file a response within 30 days from the date of service of a notice of hearing.

(2) A response must contain a statement of:

(i) the facts alleged in the statement of allegations that the respondent admits,

(ii) the facts alleged that the respondent denies and the grounds for the denial, and

(iii) all other facts on which the respondent relies.

(3) A hearing panel may accept as proven any facts alleged in a statement of allegations that are not specifically denied or for which grounds for the denial are not provided in a response.

(4) If a respondent who has been served with a notice of hearing does not serve and file a response in accordance with subsection 8415(1), the hearing panel may proceed with the hearing of the matter on its merits on the date of the initial appearance set out in the notice of hearing, without further notice to and in the absence of the respondent, and the hearing panel may accept as proven the facts and contraventions alleged in the statement of allegations and may impose sanctions and costs pursuant to section 8209 or 8210, as applicable.

¶ 61 Counsel specifically referenced Subsection 8415 (3) of the Consolidated Rules and noted that although the Respondent had been given notice of this hearing and the many procedural hearings leading up to this hearing following him being served with the Notice of Hearing on November 5, 2020, he has elected not only to not file a response to the Notice of Hearing as required by Subsection 8415(1) of the Consolidated Rules, but he has chosen from the beginning not to participate in this hearing process.

¶ 62 IIROC Senior Enforcement Counsel submitted that on this basis, the Hearing Panel should exercise its authority under Subsection 8415(3) of the Consolidated Rules and that it should proceed with this hearing on its merits, accept as proven the facts and contraventions alleged in the Statement of Allegations, and determine that the contraventions as alleged in the Notice of Hearing have been proven.

Supporting Decisions on Subsection 8415(3) of the Consolidated Rules

¶ 63 IIROC Senior Enforcement Counsel referenced the following previous decisions of IIROC hearing panels:

- *Re McCarthy* 2021 IIROC 23
- *Re Turcotte* 2017 IIROC 33
- *Re Scerbo* 2017 IIROC 57
- *Re Malley* 2014 IIROC 29 and
- *Re Connacher* 2011 IIROC 28

and noted that in each of these decisions the respondents had been duly served, did not provide the required response, and failed to cooperate with IIROC Enforcement Staff or to appear at the hearing.

¶ 64 Counsel highlighted again the clear evidence before the Hearing Panel that in the matter at hand, the Respondent had failed to attend a scheduled interview with IIROC Enforcement Staff on July 9, 2020, that he

had been duly served with the Notice of Hearing and the Statement of Allegations, that he had failed to file a Response to the Notice of Hearing, and that he had not in any manner participated in the hearing process.

¶ 65 Counsel also noted that the Statement of Allegations set out in some detail the serious allegations of fraudulent misconduct against the Respondent involving $172 million in loans, a very considerable amount of money.

¶ 66 IIROC Senior Enforcement Counsel submitted that based upon the referenced precedents, the detailed allegations of fraudulent misconduct made against the Respondent in the Statement of Allegations, and the seriousness of these allegations to the public markets and the investment industry, that the Hearing Panel should use the authority granted to it by Subsection 8415(3) of the Consolidated Rules and accept the facts contained in the Statement of Allegations and the two contraventions alleged against the Respondent in the Notice of Hearing as proven.

D. DECISION OF THE HEARING PANEL ON THE ALLEGED CONTRAVENTIONS

¶ 67 In arriving at its decision to use the authority granted to it by Subsection 8415(3) of the Consolidated Rules in order to accept as proven the facts alleged in the Statement of Allegations, the Hearing Panel was mindful that there might well be instances where it is appropriate for a panel to require the presentation of evidence in an uncontested hearing. In the present circumstances, however, the Hearing Panel took notice of:

- the complete failure of the Respondent, a person who was a senior member of the industry, to participate in any manner in what has become a very public process, or even to question the allegations made against him,
- the fact that during the relevant time period, the Respondent was the Executive Chairman, a director, and the 100% beneficial owner of the two Dealer Members where the securities accounts associated with the fraudulent activities were situated, and
- the fact that the Respondent benefited from fraudulent activities which resulted in securing loans totalling $172 million for the Ng Group, entities in which he was the sole beneficial owner.

¶ 68 The Hearing Panel finds that this is a matter that impacts very adversely on the investment industry in Canada.

¶ 69 It is the intention of the Hearing Panel to send a very strong message. The fraudulent misconduct of the Respondent, to some extent made possible by his former role as a senior member of the investment industry, and his subsequent election not to participate in this hearing process in any manner, is completely unacceptable and should face the most severe consequences. The Hearing Panel has, therefore, determined that it should utilize the authority granted to it by Subsection 8415(3) of the Consolidated Rules in order to find the facts in the Statement of Allegations and the contraventions in the Notice of Hearing as having been proven.

¶ 70 The Hearing Panel, therefore, pursuant to the provisions of Subsection 8415(3) of the Consolidated Rules accepts as proven the facts alleged in the Statement of Allegations and finds that:

- Between November 2018 and January 2020, the Respondent engaged in fraudulent conduct with respect to loan financing, contrary to Rule 1400 of the Consolidated Rules, and
- In July 2020, contrary to Section 8104 of the Consolidated Rules, the Respondent failed to cooperate with IIROC Enforcement Staff who were conducting an investigation.

HEARING ON PENALTY

A. PENALTY AND COSTS AWARD SOUGHT

¶ 71 IIROC Enforcement Counsel submitted that pursuant to Section 8210 of the Consolidated Rules the Hearing Panel should impose the following penalties on the Respondent:

a) a fine in the amount of $5,000,000, and

b) a permanent bar to approval in any capacity.

¶ 72 IIROC Enforcement Counsel further submitted that pursuant to Section 8214 of the Consolidated Rules that the Hearing Panel should assess and impose costs in the amount of $194,000 against the Respondent, which amount represents the costs of IIROC Enforcement Staff for investigating and prosecuting this matter as set out in the affidavit evidence before the Hearing Panel.

B. CONSOLIDATED RULES 1400, 8100 AND 8200 AND SANCTION GUIDELINES

¶ 73 With respect to the contraventions for which the Hearing Panel has found the Respondent liable, IIROC Enforcement Counsel noted the relevant provisions of Rules 1400, 8100 and 8200 to be as follows:

1401. Introduction

(1) This Rule sets out the general standards of conduct that apply to Regulated Persons.

1402. Standards of Conduct

(1) A Regulated Person

(i) in the transaction of business, must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and

(ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.

(2) Without limiting the generality of the foregoing, any business conduct that:

(i) is negligent;

(ii) fails to comply with a legal, regulatory, contractual, or other obligation, including the rules, requirements, and policies of a Regulated Person;

(iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person; or

(iv) is likely to diminish investor confidence in the integrity of securities, commodities or derivatives markets may be conduct that contravenes one or more of the standards set forth in subsection 1402(1)

8103. Investigation powers

(1) In connection with an investigation, Enforcement Staff may, by written or electronic request, require a Regulated Person, an employee, partner, director or officer of a Regulated Person, an approved investor, or, where authorized by law, another person to:

[…]

(iv) attend and answer questions under oath or otherwise, and any such attendance may be transcribed, recorded electronically, audio-recorded or video-recorded, as Enforcement Staff determines.

8104. Obligations of Regulated Persons and other persons

(3) A person must cooperate with Enforcement Staff who are conducting an investigation, and a Regulated Person must require its employees, partners, directors and officers to cooperate with Enforcement Staff conducting an investigation and to comply with a request made under section 8103.

8210. Sanctions for Regulated Persons other than Dealer Members

(1) If after a hearing, a hearing panel finds that an Approved Person, a non-Dealer Member user or subscriber of a Marketplace for which IIROC is the regulation services provider or an employee, partner, director or officer of such a user or subscriber has contravened IIROC requirements, securities laws, or other requirement relating to trading or advising in respect of securities, futures contracts, or derivatives, the hearing panel may impose on such person one or more of the following sanctions:

(i) a reprimand,

(ii) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention,

(iii) a fine not exceeding the greater of:

(a) $5,000,000 for each contravention, and

(b) an amount equal to three times the profit made, or loss avoided by the person,

directly or indirectly, as a result of the contravention,

(iv) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions,

(v) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace,

(vi) prohibition of approval in any capacity, for any period of time, including access to a Marketplace,

(vii) revocation of approval,

(viii) a permanent bar to approval in any capacity or to access to a Marketplace,

(ix) a permanent bar to employment in any capacity by a Regulated Person, and

(x) any other sanction determined to be appropriate under the circumstances.

8214. Costs

(1) After a hearing under Rule 8200, other than a hearing under section 8211, a hearing panel may order a person who is the subject of a sanction to pay any costs incurred by or on behalf of IIROC in connection with the hearing and any investigation related to the hearing.

(2) Costs ordered under subsection 8214(1) may include:

(i) costs for time spent by IIROC staff,

(ii) fees paid by IIROC for legal or accounting services or for services rendered by an expert witness,

(iii) witness fees and expenses,

(iv) costs of recording and transcribing evidence and preparation of transcripts, and

(v) disbursements, including travel costs.

C. SUPPORTING DECSIONS ON THE APPLICATION OF CONSOLIDATED RULES 1400, 8100 AND 8200 AND OF THE SANCTION GUIDELINES

¶ 74 IIROC Enforcement Counsel referenced the following decisions of hearing panels as being applicable to the matter at hand with respect to Rule 1400 of the Consolidated Rules:

Re Phillips & Wilson 2013 IIROC 52
Re TD Waterhouse Canada 2020 IIROC 09
Re Conville 2013 IIROC 5
Re Howell 2016 IIROC 48
Re Ryan 2012 IIROC 29
Re Dennis 2012 ONSEC 24
Re Melville 2014 IIROC 51
Re Connacher 2011 IIROC 28
Re Kumar 2015 IIROC 33
Re Gurion [2004] I.D.A.C.D. No. 32
Re McCarthy 2021 IIROC 33
Re Scerbo 2017 IIROC 57
Re Ahn 2011 IIROC 31
Re Hart [2006] I.D.A.C.D. No. 2.

¶ 75 Counsel noted that although these decisions dealt with contraventions similar to the one at hand, none of them involved sums of money which came close to equalling the $172 million referenced in the fraudulent misconduct of the Respondent.

¶ 76 IIROC Staff Counsel referenced the following decisions of hearing panels as being applicable to the matter at hand with respect to Rule 8100 of the Consolidated Rules:

Re Lower 2009 IIROC 39
Re Smith 2009 IIROC 48
Re O'Neill 2011 IIROC 19
Re Dirani 2016 IIROC 13.

¶ 77 Counsel noted that in these cases dealing with the failure to attend a compelled investigatory interview hearing panels have imposed a significant fine, a permanent ban on approval in any capacity, and an assessment and imposition of costs.

D. IIROC'S SUBMISSIONS ON RECOMMENDED SANCTIONS

The Consolidated Rules

¶ 78 IIROC Senior Enforcement Counsel submitted that the element of trust is a fundamental building block of the investment industry and that any participant, especially one such as the Respondent who had a position of authority and ownership, has an obligation to observe this element of trust. Where this obligation has been abused in a such an egregious manner as in the matter at hand, the most serious consequences should follow.

¶ 79 The obligation of maintaining this atmosphere of trust and the consequences of failing to do so was clearly recognized in *Re Scoten* 2012 IIROC 67 at paragraph 21 where the hearing panel stated:

> The Investment Industry by necessity operates in an atmosphere of trust. Trust between the Approved Person and his or her client, trust between the Approved Person and his or her employer, and trust between the Approved Person and IIROC Staff. Where an Approved person breaches any of these trust

relationships, serious consequences should follow.

¶ 80 Similarly, with respect to the obligation on a registrant to cooperate with IIROC Enforcement Staff conducting an investigation, IIROC Enforcement Counsel submitted that this obligation to cooperate is fundamental to maintaining the integrity of the securities system and referenced the statement of the hearing panel in *Re Morrison* 2009 IIROC 4 at paragraph 51:

> The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association's By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Stewart*, there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 81 IIROC Senior Enforcement Counsel noted that Subsection 8210(ii) of the Consolidated Rules provides for a sanction including the disgorgement of any amount obtained directly or indirectly as a result of the contravention. However, IIROC Enforcement Staff is not seeking disgorgement in the matter at hand. He submitted that similar to that, as was observed by the British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207 at page 46, a disgorgement order is a sanction that is not intended to punish the contravener or to compensate the public or victims of the contravention, but to deter persons from contravening the Consolidated Rules.

¶ 82 Counsel noted that in the matter at hand there were no client losses involved in the contraventions and the lenders making the loans were sophisticated parties. Therefore, he stated, as the primary purpose of securities regulatory sanctions is that of deterrence and not of compensation, IIROC Enforcement Staff has focused in their penalty recommendations on the maximum monetary penalty and a permanent bar from the investment industry and not on a disgorgement order.

¶ 83 IIROC Senior Enforcement Counsel submitted that the Respondent's fraudulent misconduct is without precedent in the investment industry. It reflected an abuse of his position of trust and authority as an officer and director and as a beneficial owner of a Dealer Member firm. The Respondent's egregious misconduct is beyond offensive and should result in serious penalties in the form of the maximum permitted fine of $5,000,000 and a permanent bar from the industry.

The IIROC Sanction Guidelines

¶ 84 In his submission on the IIROC *Sanction Guidelines*, IIROC Senior Enforcement Counsel noted that the general principles envisioned in these sanctions recommend that any sanctions imposed by a hearing panel should be significant enough to prevent and discourage future misconduct by the respondent as a form of specific deterrence and, as well, to deter others from engaging in similar misconduct as a form of general deterrence.

¶ 85 To achieve an appropriate balance between these two forms of deterrence, a hearing panel must impose a sanction which addresses the respondent's misconduct resulting in the sanction and, in the context of general deterrence, impose a sanction similar to sanctions imposed on respondents for similar contraventions in similar circumstances and in line with industry expectations.

¶ 86 IIROC Senior Enforcement Counsel addressed the behaviour of the Respondent, which was set out in some detail in the Statement of Allegations, in the context of the following key factors outlined in the *Sanction Guidelines*:

1. *The number, size, and character of the transactions at issue*.

   i. In order to provide substance for security to obtain loans, the Respondent falsified the

account statements, summaries, and screenshots of nine securities accounts by:

1. representing two accounts of unrelated clients as his own,
2. altering his own account statements to falsify the market value of the securities held therein, and
3. representing fictitious accounts as real.

ii. The Respondent executed legal agreements misrepresenting his ownership interest in the collateral provided for security for loans.

iii. The Respondent's fraudulent conduct enabled him to secure loans totalling $172 million over a period of 15 months, of which funds, $100 million were used to purchase PI Financial, a Dealer Member firm.

iv. The number, size and character of these transactions is without precedent in the history of IIROC and its predecessor organization and reflects an extraordinary degree of fraudulent misconduct.

2. *Whether the respondent engaged in numerous acts and/or a pattern of misconduct.*

The fraudulent misconduct involved many acts and a pattern of fraudulent misconduct by the Respondent.

3. *Whether the respondent engaged in the misconduct over an extended period of time.*

The fraudulent misconduct by the Respondent occurred over a period from November 2018 to January 2020.

4. *Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements.*

The fraudulent conduct of the Respondent was clearly intentional and deliberate. It obviously required a great deal of planning and calculation to achieve the desired result of owning and, subsequently, benefiting from the future profits of a Dealer Member firm.

5. *Extent of harm to clients or other market participants.*

There was no evidence of client losses, but sophisticated lenders were significantly impacted.

6. *Extent of harm to market integrity or the reputation of the marketplace, or both.*

The Respondent's fraudulent misconduct clearly harmed market integrity and the reputation of the marketplace.

8. *The respondent's relevant disciplinary history.*

The Respondent has no prior formal disciplinary history.

9. *Extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct.*

The Respondent obtained an extraordinary degree of financial benefit through the loans and his beneficial ownership of PI Financial Corp.

10. *In the case of individuals, whether the respondent accepted responsibility for and acknowledged the misconduct to his or her employer or the regulator prior to detection and intervention by the Dealer Member or the regulator.*

The Respondent did not accept or acknowledge his fraudulent misconduct.

12. *Whether an individual respondent was subject to internal discipline by the Dealer Member.*

The Respondent resigned from his duties with PI Financial on February 11, 2020.

15. *Whether the respondent provided proactive or exceptional assistance to IIROC in the investigation of the misconduct*

The Respondent has failed completely to be involved in the entire regulatory process.

16. *Whether the respondent attempted to delay IIROC's investigation, to conceal information from IIROC, or intentionally provided inaccurate or misleading testimony or documentary information to IIROC.*

The Respondent failed to attend an interview with IIROC Enforcement Staff on July 9, 2020 thereby impeding the IIROC investigation.

19. *Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive, or intimidate a client, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.*

The entire basis of the Respondent's misconduct arose out of deception in carrying out a fraudulent scheme by deceiving lenders into providing $172 million in loans in reliance on falsified and fictitious documentation from firms he controlled, which documentation purportedly evidenced substantial financial assets as security when such was not the case.

¶ 87 IIROC Senior Enforcement Counsel submitted that in an industry built on trust, the Respondent's fraudulent misconduct, as highlighted above, deserves the harshest sanctions.

¶ 88 The only mitigating factor, IIROC Senior Enforcement Counsel submitted, was that there were no client losses.

¶ 89 However, in that the Respondent was the Executive Chairman, a director and a 100% beneficial owner of two Dealer Members, which positions facilitated him carrying out the fraudulent misconduct, IIROC Senior Enforcement Counsel submitted that the maximum penalty permissible under the Consolidated Rules, being a fine in the amount of $5,000,000, a permanent ban from the industry, and an order to pay the demonstrated costs of IIROC Enforcement Staff amounting to $194,000 are the appropriate sanctions.

E. THE DECISION OF THE HEARING PANEL ON PENALTY

¶ 90 Following the submissions of IIROC Senior Enforcement Counsel, the Hearing Panel concluded that the fine of $5,000,000, as being the maximum fine permitted by the Consolidated Rules, was an appropriate penalty.

¶ 91 Such a penalty reflects the Hearing Panel's belief that its imposition constitutes an appropriate level of sanction to provide both specific and general deterrence and to send a strong message to the industry that the fraudulent misconduct of the Respondent is condemned in the strongest terms.

¶ 92 Similarly, the Respondent's refusal to participate in any manner in this hearing process reflects his distain for the industry in which he participated in a senior role and clearly justifies his permanent ban and the award of costs being made against him.

¶ 93 The Hearing Panel therefore orders that pursuant to Rule 8210 of the Consolidated Rules:

- the maximum fine of $5,000,000 be imposed on the Respondent, and
- a permanent bar from registration in any capacity be imposed on the Respondent.

¶ 94 The Hearing Panel further orders that pursuant to Rule 8214 of the Consolidated Rules the Respondent pay to IIROC costs in the amount of $194,000.

Dated at Vancouver, British Columbia this 4 day of July 2022.

John Rogers, Chair

Bradley Doney

Barbara Fraser